

FILED/ACCEPTED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AUG 28 2009
Federal Communications Commission
Office of the Secretary

In the Matter of)	EB Docket No. 07-147
)	
PENDLETON C. WAUGH, CHARLES M.)	File No. EB-06-IH-2112
AUSTIN, and JAY R. BISHOP)	NAL/Acct. No. 200732080025
)	
PREFERRED COMMUNICATION)	FRN No. 0003769049
SYSTEMS, INC.)	
)	
Licensee of Various Site-by-Site Licenses in)	
the Specialized Mobile Radio Service.)	
)	
PREFERRED ACQUISITIONS, INC.)	FRN No. 0003786183
)	
Licensee of Various Economic Area Licenses)	
in the 800 MHz Specialized Mobile Radio)	
Service)	

To: Chief Administrative Law Judge
Richard L. Sippel

ENFORCEMENT BUREAU'S SETTLEMENT FACT STATEMENT

1. The Enforcement Bureau hereby provides information clarifying, among other things, the events leading up to the execution of the Settlement Agreement in this proceeding. This information is provided pursuant to *Pendleton C. Waugh et al.*, Order, FCC 09M-53 (ALJ rel. Aug. 20, 2009) ("Order"), in which the Presiding Judge, subsequent to terminating this hearing proceeding, raised questions about how settlement negotiations were conducted.

No. of Copies rec'd 076
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I. INTRODUCTION

2. As a threshold matter, the Bureau represents without reservation that the settlement negotiations were conducted ethically, fairly, candidly, and in accord with all prevailing Commission rules of procedure. The Bureau sincerely regrets if the Presiding Judge has received any impression to the contrary. The Bureau trusts that any such impression will be corrected by the facts stated herein.

3. The Order appears to be based on a misunderstanding of the facts as the Bureau knows them. Accordingly, we begin below by setting forth our understanding of the facts described in the Order.¹ Then, as directed by the Presiding Judge in the Order, we provide a full statement of the circumstances leading up to the execution of the Settlement Agreement.² As explained below:

- Mr. Waugh was served with the Settlement Agreement and related pleadings at the time of filing, as were all other parties, in accordance with the Commission's rules;
- The Bureau never barred or excluded Mr. Waugh from settlement negotiations; and
- In any event, the Bureau never needed to include Mr. Waugh in any settlement with the other parties.

II. DISCUSSION

A. The Order Relies on Erroneous Information

4. The Order, apparently relying on representations by Mr. Waugh, states that Mr. Waugh was “not served and had not seen the Joint Request for Approval of

¹ See paragraphs 4-12, *infra*.

² See paragraphs 14-27, *infra*.

Settlement Agreement and Termination of Proceeding ('Joint Motion'), or the proposed Settlement Agreement ('Agreement') that were filed and submitted to the Presiding Judge on August 5, 2009.”³ This assertion is incorrect. In fact, the Bureau electronically transmitted copies of the Joint Request and Agreement on the day they were filed,⁴ first to the Presiding Judge in an e-mail at 2:44 p.m. on August 5, 2009, and then in another e-mail to Mr. Waugh’s counsel and the other parties to the proceeding at 2:50 p.m. Copies of both e-mails are provided at **Attachment A**. The e-mails clearly demonstrate that Mr. Waugh’s counsel was among the addressees of the latter e-mail, per his agreement to accept service of pleadings via e-mail in this case.⁵ Thus, Mr. Waugh, through his counsel, was duly provided with copies of both documents *simultaneously with the other parties in this case and a mere six minutes after the Presiding Judge*. Consequently, there is absolutely no basis whatsoever for Mr. Waugh’s claim that Mr. Waugh “was not served and had not seen” the documents that were filed and submitted to the Presiding Judge on August 5, 2009.⁶ The Bureau further notes that the certificate of service appended to the Joint Request reveals that all parties, including Mr. Waugh, and the Presiding Judge were properly served.⁷

5. The Order, again apparently relying on representations by Mr. Waugh, states that “it was not until the p.m. of August 5, that [Mr. Waugh’s] counsel was

³ *Pendleton C. Waugh, et al.*, Order, FCC 09M-51, at 1, ¶ 2. (ALJ Sippel, rel. August 6, 2009) (“Order”)

⁴ The Joint Request was date-stamped by the Office of the Secretary, evidencing that it had been properly filed on August 5, 2009.

⁵ This agreement was reached at the first Prehearing Conference in this case. See EB Docket No. 07-147, Transcript, page 28, line 12-page 29, line 2.

⁶ Order at 1.

⁷ The Bureau refrained from clarifying this further after Mr. Waugh’s latest pleading, a Reply, because a reply to a reply is generally impermissible under the Commission’s rules and given the other indications in the record, discussed above, the Bureau saw no need to seek special permission to file such a pleading. See 47 C.F.R. § 1.294.

contacted via telephone by Bureau counsel, only to be told of the filing of the Agreement and Joint Motion. It appears that neither Mr. Waugh nor his counsel were provided copies of the Joint Motion or Agreement at the time of the phone call.”⁸ But Mr. Waugh was not a signatory to either the Agreement or the Joint Request. Thus, the Bureau had no obligation to provide Mr. Waugh or his counsel with advance notice of the Agreement and Joint Request, and no obligation to provide Mr. Waugh or his counsel with advance copies of its intended filings. Indeed, the Bureau is aware of no rule or policy requiring one party in a hearing proceeding to inform another of its *intention* to file a particular pleading or to provide a copy of a pleading to another party *in advance* of its filing. Rather, Section 1.211 of the Commission’s Rules requires that pleadings filed in hearing cases shall be served on all other parties (or their counsel) in the proceeding.⁹

6. As a courtesy to Mr. Waugh, the Bureau contacted his counsel via telephone to inform him that he would soon be receiving service copies of both the Agreement and Joint Request. The Bureau extended Mr. Waugh the courtesy of such advance notice precisely because Bureau counsel and Mr. Waugh’s counsel had previously spoken many times about including Mr. Waugh in a settlement of this case, albeit without success. As shown above, shortly after the Bureau made the referenced courtesy call, it properly served Mr. Waugh’s counsel with copies of both pleadings in compliance with 47 C.F.R. § 1.211. The Bureau had no obligation to notify Mr. Waugh or his counsel of the pleadings before that point.

⁸ Order at 1.

⁹ See 47 C.F.R. §1.211.

7. The Order states that the Joint Motion and Agreement gave the impression that “all parties” were on board with the proposed resolution.¹⁰ The Bureau respectfully submits that this statement is explicitly contradicted by the pleadings themselves. For example, the opening paragraph of the Joint Request specifically identifies the moving parties as Messrs. Charles M. Austin and Jay R. Bishop; Preferred Communication Systems, Inc.; Preferred Acquisitions, Inc.; and the Bureau. At no point does the Joint Request suggest that Mr. Waugh is included as a moving party. In addition, the Joint Request, at paragraph 3, clearly distinguishes between “Parties” to the pleading and Mr. Waugh, indicating that Mr. Waugh was not among those joining in the Joint Request. In addition, Mr. Waugh was not a signatory to the Settlement Agreement, a fact to which the Joint Request, at footnote 7, specifically alerts the Presiding Judge. Finally, the Joint Request, at paragraph 6, articulates that Messrs. Charles M. Austin and Jay R. Bishop; Preferred Communication Systems, Inc.; and Preferred Acquisitions, Inc. have authorized the Bureau to file the Joint Request on their behalf. Mr. Waugh was not among those so authorizing the Bureau. In sum, neither the Joint Request nor the Settlement Agreement represent or even imply that the resolution proposed therein was universal or that Mr. Waugh was among those “on board” with the settlement.

8. The Order also suggests that Mr. Waugh was a necessary party to the resolution of the case.¹¹ The Bureau certainly would have preferred a universal settlement which included Mr. Waugh. Toward this end and as described more fully below, the Bureau had a number of settlement discussions with Mr. Waugh’s counsel over an extended period of time. As Mr. Waugh himself concedes, however, in his

¹⁰ Order at 2.

¹¹ *Id.*

Notice of Appeal, Mr. Waugh voluntarily did not join the Settlement Agreement due to a disagreement between him and the other parties on a key issue.¹² Despite the Bureau's long standing preference and efforts to include Mr. Waugh, settlement of this case does not require his participation. As the Joint Request accompanying the Settlement Agreement noted, approval of the Settlement Agreement renders moot any remaining issues as to Mr. Waugh. Indeed, for the reasons articulated in the Joint Request, the Bureau continues to believe that the settlement proposed in the subject Agreement was and is in the public interest.

9. The Order also states that “[t]here was no information provided as to whether Mr. Waugh had been invited to participate in settlement, and no indication of his knowledge of settlement or termination without resolving disqualifying issues against Mr. Waugh.”¹³ The Bureau respectfully submits that months of joint status reports reflect that Mr. Waugh was invited to, and in fact, actively participated in, settlement negotiations. Moreover, Mr. Waugh states in his Notice of Appeal that “he did not join the settlement” due to the Bureau's position on certain terms, reflecting attempts by the Bureau and other parties to *repeatedly* inform him that they would attempt to negotiate a settlement without his participation as a last ditch effort to resolve this case without a trial, if he continued to insist on terms that the other parties found objectionable.¹⁴

10. The Order states that “[n]othing was filed [after issuance of the Presiding Judge's August 6, 2009 Order, FCC 09M-51] by the Bureau or any of the settling parties

¹² Although the Bureau appears on the certificate of service for the Notice of Appeal as one of the parties that Mr. Waugh served with a copy of that pleading, to date, the Bureau has not received such a copy. In fact, the Bureau discovered the pleading's existence through a search of the Commission's Electronic Comment Filing System.

¹³ Order at 2.

¹⁴ *Pendleton C. Waugh, et al.*, Notice of Appeal, filed by Pendleton C. Waugh, on August 13, 2009.

to clarify a misunderstanding in issuance of the *Order* that a truly universal settlement had been reached among all parties named in the case caption.”¹⁵ As explained above, the Bureau was unaware that any such misunderstanding existed because the Joint Request and Agreement made clear that Mr. Waugh was not a party to the Settlement Agreement. Thus, there being nothing in the Order that the Bureau perceived as requiring clarification, the Bureau did not file a clarifying document.

11. The Order also states that Mr. Waugh alleges “[p]otential harm caused by premature termination whereby rights are denied . . .” as a basis for “good cause for further reflection and inquiry,” presumably in the form of an abeyance of the Judge’s August 6, 2009 Order.¹⁶ The harm alleged appears to be that “Waugh neither agreed to such penalties nor was afforded the opportunity for a hearing with respect to such penalties or his qualifications to be and remain a Commission licensee”¹⁷

12. The Bureau respectfully submits that the nature of the “penalties” to which Mr. Waugh refers is not entirely clear. The resolution contemplated in the Settlement Agreement does not impose any forfeitures against Mr. Waugh; it does not require Mr. Waugh to make any monetary contributions; and it does not result in the revocation of any license, permit, or operating authority of, or the taking of any property from, Mr. Waugh by the Federal government. To the extent Mr. Waugh takes issue with terms in the Settlement Agreement affecting his future involvement in PCSI and/or PAI, such concerns involve decisions that PCSI and PAI management apparently have determined are in the best interest of the companies. Consequently, Mr. Waugh’s recourse as to his

¹⁵ Order at 2.

¹⁶ *Id.*

¹⁷ *Id.*

future role in the companies and any other private contractual concerns he may have with them is with PCSI and/or PAI, not the Commission. To the extent that the “penalties” to which Mr. Waugh refers consist of not having the opportunity to a hearing at this time on his individual qualifications as a convicted felon to be a licensee, the Bureau submits that Mr. Waugh has no present entitlement to such a hearing in his capacity as a non-licensee, non-permittee, and non-applicant before this agency. In the absence of any interest in any authorization or application, such a hearing on Mr. Waugh’s individual qualifications at this time would be akin to rendering a declaratory ruling in the absence of a live case or controversy.

B. The Bureau Consistently Included Mr. Waugh In Settlement Negotiations Prior to June 12, 2009

13. Although the Presiding Judge’s Order directs the signatories to the Settlement Agreement to file a Settlement Fact Statement describing the circumstances and occurrences since June 12, 2009 leading up to the execution of the Settlement Agreement, the Bureau respectfully submits that the relevant time frame and context are much broader. The Bureau provides this further background to give the Presiding Judge the necessary factual context to fully understand and appreciate the history of the negotiations, which stretched on more than a year, between the Bureau and the above-captioned parties.¹⁸ The Presiding Judge should note that the Bureau frequently caucused with individual parties on specific issues and then received separate communications that were incorporated in group teleconferences among all the parties. The Bureau also encouraged the parties to do the same with each other in order to facilitate a candid

¹⁸ The Bureau notes that it was not necessarily privy to all negotiations that took place and that there may have been settlement talks exclusively among the above-captioned parties. Thus, the Bureau’s recitation of events and occurrences herein is, by necessity, limited to those in which the Bureau participated and of which the Bureau has knowledge.

dialogue about various settlement issues. There is no Commission or ethical rule barring such communications among the Bureau and/or the parties, and in doing so, the Bureau did not work to exclude any particular party from settlement negotiations. In fact, the Bureau has consistently sought a universal settlement among all the parties, which seemed well within reach during most of the negotiations.

14. The Bureau conducted itself in the manner most practical to encourage settlement. The non-Bureau parties in this matter share a lengthy, and often contentious, history with each other, and the Bureau sought to learn the parties' positions in separate negotiations as part of its effort to negotiate efficiently and candidly on the most substantive issues among the most concerned parties. The Bureau sought to obtain updates, particularly on key business issues outside the scope of this case or its settlement but germane to the parties' incentives to negotiate settlement.¹⁹

15. The Bureau and the above-captioned parties had, in fact, informally negotiated settlement since July 23, 2008. On that date, the above-captioned parties first submitted a joint Settlement Offer to the Bureau. The Bureau then evaluated the Settlement Offer while concurrently engaging in discovery and planning depositions. On or about November 17, 2008, the Bureau rejected that initial Settlement Offer to the above-captioned parties. Even so, from time to time, the above-captioned parties occasionally discussed the resumption of settlement negotiations with the Bureau.²⁰

¹⁹ To avoid overburdening the Presiding Judge and disclosing unnecessary details of the settlement negotiations between the parties, however, the Bureau refrains from providing the documentation concerning negotiations outside of the time frame ordered by the Presiding Judge, June 12, 2009 to August 5, 2009. The Bureau will provide such documentation on further order or request.

²⁰ The parties did so through a telephone call with Preferred's counsel, David Kaufman, on November 19, 2008; through a meeting with Mr. Austin after depositions conducted on or about January 5, 2009; and through a phone call from Mr. Waugh's counsel during February 2009.

16. On March 9, 2009, the Bureau and the above-captioned parties, including Mr. Waugh, agreed to resume settlement negotiations on a more formal basis. On March 10, 2009, the parties jointly filed a request to the Presiding Judge to stay the procedural schedule to allow the parties to negotiate settlement formally. On March 11, 2009, the Presiding Judge granted that request in an Order, FCC 09M-27.

17. The Bureau notes that, according to its records, the parties held one joint meeting/call on March 25, 2009. The parties also exchanged several emails. Some of the e-mails excluded Mr. Waugh, for the reasons noted above.²¹ Some of the e-mails to Mr. Waugh excluded the other above-captioned parties.

18. On April 8, 2009, the Bureau and the above-captioned parties, including Mr. Waugh, filed a joint status report regarding settlement negotiations and requested more time to continue them. At all times noted, parties continued to negotiate their settlement positions through phone calls and teleconferences, gradually reducing the number of open issues to one or two. The parties continued negotiating settlement, holding at least one conference call between the Bureau and Mr. Waugh's counsel on April 30, 2009, one conference call between the Bureau and Preferred's counsel on May 5, 2009, and numerous email exchanges, both with and without Mr. Waugh. On May 6, 2009, the Presiding Judge granted the parties' request for more time to negotiate settlement in an Order, FCC 09M-39. The parties continued negotiating settlement, through a joint conference call on May 13, 2009, conference calls between Preferred and the Bureau on May 27, 2009 and June 4, 2009, and numerous email exchanges, both with and without Mr. Waugh, along the lines outlined above.

²¹ See paragraphs 13-14, *supra*.

19. The Bureau largely relied on PCSI for updates on negotiations between it and Mr. Waugh on side business issues that impacted these parties' willingness to settle the issues in the instant case. Notably, the Bureau and the other parties repeatedly informed Mr. Waugh that if the parties could not advance their side business issues and if Mr. Waugh, the Bureau, and the other parties could not break an impasse on a key issue, the parties would consider moving toward a settlement without Mr. Waugh. The Bureau so informed Mr. Waugh's counsel in informal conversations on several occasions, including, but not limited to, in-person meetings before the initial Settlement Offer was submitted on July 23, 2008; during the parties' March 25, 2009 meeting/conference call; during a telephone call on June 29, 2009; and during a telephone call on July 31, 2009, as described further below. At all times, however, the lines of communication between all parties remained open. To the Bureau's knowledge, no one excluded Mr. Waugh or concealed the possibility of a settlement that would not include him as a signatory.

20. This is clearly supported by the fact that on June 10, 2009, the Bureau and the above-captioned parties, including Mr. Waugh, filed a second joint status report regarding settlement negotiations and requested more time to continue them. Page 2 of that status report describes a "significant breakthrough" in negotiations on a key issue. Accordingly, on the filing date of the Second Joint Status Report, it appeared that Mr. Waugh shared the Bureau's and the other parties' interest in a universal settlement, and the parties jointly reported to that effect. At this point, the parties stated, in their joint status report, that they appeared to be very close to settlement.

C. Mr. Waugh Removed Himself From Universal Settlement Negotiations During the Period After June 12, 2009

21. On June 12, 2009, the Presiding Judge granted the parties more time to negotiate in an Order, FCC 09M-44, bringing negotiations to the time frame of interest to the Presiding Judge. The chart below summarizes the communications that occurred during this time frame. This chart is based on the best of the Bureau's information after combing through months of internal notes, internal calendar entries, email archives, and documents sent from the parties to the Bureau or vice versa.

22. Regrettably, the "significant breakthrough" described in the June 10, 2009 joint status report evaporated on July 8, 2009, when Mr. Waugh's counsel forwarded a document to the other parties just hours before a scheduled teleconference. That document, a position statement, effectively repudiated all of the previous progress made by the parties over the course of many months of tedious negotiations. In his document, Mr. Waugh revoked all of his prior positions to which the other parties had already essentially agreed in principle. Furthermore, the document included new demands for, among other things, a change in the Commission's position *vis a vis* pending litigation in the D.C. Circuit Court, as well as actions by other Bureaus in the Commission – *matters over which the Bureau had no control and/or about which it was prohibited from communicating because of ex parte restrictions*.

23. In the teleconference immediately thereafter, the Bureau made abundantly clear to Mr. Waugh's counsel that it considered his client's new and previously undisclosed demands, which were, in fact outside the Bureau's purview, to have effectively scuttled all negotiations between Mr. Waugh and the other parties to the proceeding. Mr. Waugh's counsel declined to discuss these new demands, outside of

acknowledging that they were beyond the Bureau's ability to negotiate, and did not attempt to explain the abandonment of all of Mr. Waugh's prior positions. To the Bureau's knowledge, Mr. Waugh's counsel understood at that point that his client's demands contravened the Bureau's position, reiterated during negotiations numerous times. It also became painfully clear that Mr. Waugh's new posture effectively signaled an end to the parties' prolonged efforts to effect a universal resolution of the proceeding.

24. Notwithstanding the above, the Bureau informed Mr. Waugh's counsel in no uncertain terms through a final telephone call on July 31, 2009, that Mr. Waugh ran the risk of the other parties entering into a settlement without him. During that call, the Bureau advised Mr. Waugh's counsel that if a decision on settlement was made before the next deadline, the parties would necessarily settle without him. Before the telephone call concluded and in an effort to keep the lines of communication open in the hopes of effectuating a universal resolution, the Bureau invited Mr. Waugh to advise the Bureau if his position changed in any respect. When that did not happen by August 5, 2009, the Bureau and other parties entered into settlement without him, but even then, not without a final courtesy call to advise Mr. Waugh's counsel of what he should expect to receive.

25. In several pleadings filed during and subsequent to the above negotiations, Mr. Waugh has made abundantly clear that *he* conducted an about-face after the Second Joint Status Report but before the Settlement Agreement was filed, tried to join others' efforts to derail the settlement negotiations, and was not involuntarily excluded by the Bureau or anyone else. Examples include:

- Mr. Waugh's July 28, 2009, Comments in Support of Motion for Limited Intervention,²² in which he supports the intervention of a non-party group to "as[k] the Presiding Judge to hold any proposed settlement between the Commission's Enforcement Bureau and the above-captioned corporations in abeyance[;]"²³
- Mr. Waugh's August 6, 2009, Erratum to Comments in Support of Motion for Limited Intervention, Motion for Summary Judgment, for the same reasons; and
- Mr. Waugh's August 13, 2009, Notice of Appeal, in which he notes that he "*did not join the Settlement Agreement*,"²⁴ rather than claiming the Bureau involuntarily excluded him from the Agreement.

26. The chart below provides further detailed information, in response to the Presiding Judge's Order, concerning the date, type, participating parties, and reasons for excluding Waugh, if applicable, from all communications between June 12, 2009, and August 5, 2009, concerning settlement negotiations in this case. This chart represents the Bureau's best information, based on the search described above.

²² See *Pendleton C. Waugh, et al.*, Comments in Support of Motion for Limited Intervention, at 3, filed by Pendleton C. Waugh, on July 28, 2009.

²³ *Pendleton C. Waugh, et al.*, Motion for Limited Intervention, at 2, filed by Michael D. Judy, on July 17, 2009.

²⁴ *Pendleton C. Waugh, et al.*, Notice of Appeal, at 2-3, filed by Pendleton C. Waugh, on August 13, 2009 (emphasis added).

Date	Type of Communication	Participating Parties and/or Counsel	Reasons for Excluding Waugh, if applicable
6/17/2009	Telephone Call	EB, Waugh	N/A
6/18/2009	Telephone Call	EB, Waugh	N/A
		EB, Waugh.	
	E-mail exchanges	Preferred, both separately and jointly	Where applicable, see paragraphs 13-14.
6/24/2009	E-mail exchange	EB, Waugh	N/A
6/26/2009	E-mail exchange and documents	EB, Preferred	See paragraph 14.
6/29/2009	Telephone Call	EB, Waugh, Preferred	N/A
6/29/2009	Telephone Call	EB, Preferred	See paragraph 14.
		EB, Waugh, Preferred, both separately and jointly	Where applicable, see paragraphs 13-14.
6/29/2009	E-mail exchanges	EB, Waugh, Preferred, both separately and jointly	Where applicable, see paragraphs 13-14.
7/2/2009	E-mail exchanges	EB, Waugh, Preferred	N/A
7/7/2009	E-mail exchange	EB, Preferred	See paragraphs 13-14.
7/7/2009	Telephone Call	EB, Preferred	
	E-mail exchange and documents	EB, Waugh, Preferred, Bishop	N/A
7/8/2009	Telephone Call	EB, Waugh, Preferred	N/A
7/8/2009	Telephone Call	EB, Preferred	See paragraphs 22-23.
7/13/2009	E-mail exchange	EB, Preferred	See paragraphs 22-23.
7/13/2009	Telephone Call	EB, Preferred	See paragraphs 22-23.
7/15/2009	E-mail exchange	EB, Preferred	See paragraphs 22-23.
	E-mail exchange and documents	EB, Preferred	See paragraphs 14, 22-23.
7/16/2009	Telephone Call	EB, Preferred	See paragraphs 14, 22-23.
	E-mail exchange and documents	EB, Preferred	See paragraph 14.
7/16/2009	E-mail exchange and documents	EB, Preferred, Bishop	See paragraph 14.
7/18/2009	E-mail exchange and documents	EB, Preferred, Bishop	See paragraph 14.
7/20/2009	E-mail exchange	EB, Preferred	See paragraphs 14, 22-23.
7/20/2009	Telephone Call	EB, Preferred	See paragraphs 13-14.
7/21/2009	E-mail exchange	EB, Preferred	See paragraphs 14, 22-23.
7/21/2009	Telephone Call	EB, Preferred	See paragraph 14.
7/28/2009	Telephone Call	EB, Preferred	See paragraphs 14, 22-23.
7/29/2009	E-mail exchange	EB, Preferred	See paragraphs 14, 22-23.
7/30/2009	Telephone Call	EB, Preferred	See paragraphs 14, 22-23.
	E-mail and documents	EB, Preferred	See paragraphs 14, 22-23.
7/30/2009	E-mail exchange	EB, Preferred	See paragraphs 14, 23-24.
7/31/2009	Telephone call	EB, Preferred	See paragraphs 23-25.

Date	Type of Communication	Participating Parties and/or Counsel	Reasons for Excluding Waugh, if applicable
7/31/2009	Telephone Call	EB, Waugh	See paragraph 25.
8/3/2009	E-mail exchange	EB, Preferred	See paragraph 25.
8/3/2009	Telephone Call	EB, Preferred	See paragraph 25.
8/3/2009	Telephone Call	EB, Bishop	See paragraphs 13-14, 25.
8/3/2009	E-mail exchange and documents	EB, Preferred, Bishop	See paragraph 25.
8/4/2009	E-mail exchange	EB, Preferred	See paragraphs 13-14, 25.
8/4/2009	Telephone Call	EB, Preferred	See paragraphs 13-14, 25.
8/5/2009	Telephone Call	EB, Waugh	See paragraph 25.
8/5/2009	E-mail exchange and documents	EB, Preferred, Waugh, Bishop	N/A

27. In sum, there is no basis for the assertion that the Bureau or any other party excluded Mr. Waugh involuntarily from negotiations after the last joint status report on June 10, 2009. To the contrary, the Bureau made every possible effort to include Mr. Waugh in a universal settlement, while promoting the then-fledgling settlement, which it believed would serve the public interest. Mr. Waugh suffered no harm as a result of the Bureau's actions. The Bureau included him in settlement negotiations, advised him by courtesy call and served him with copies of related pleadings, and did not impose any penalties or sanctions, such as a forfeiture, on Mr. Waugh. As such, the Bureau adhered to the principles of fairness in dealing with Mr. Waugh at all times.

III. CONCLUSION

28. Accordingly, the Bureau respectfully requests that the Presiding Judge reinstate his August 6, 2009, Order, FCC 09M-51. To the extent that the Presiding Judge wishes to discuss any of the issues described above, or has any lingering questions

concerning the Bureau's conduct, the Bureau would be amenable to a conference in the Presiding Judge's chambers or a teleconference, with all parties present in either course.

Respectfully submitted,

Suzanne M. Tetreault
Acting Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Gary A. Oshinsky", written over a horizontal line.

Gary A. Oshinsky
Anjali K. Singh
Attorneys, Investigations and Hearings Division

Federal Communications Commission
445 12th Street, S.W., Room 4-C330
Washington, D.C. 20554
(202) 418-1420

August 28, 2009

ATTACHMENT A

Note: Certain portions of this Attachment were protected at the time that they were first filed, but are no longer subject to Protective Order protection, as of August 6, 2009. *See* Order, FCC 09M-51.

Anjali Singh

From: Tamika Parker
Sent: Wednesday, August 05, 2009 2:44 PM
To: Richard Sippel
Cc: Anjali Singh; Gary Oshinsky
Subject: Preferred Communication Sytems Inc
Attachments: Settlement to Presiding Judge.pdf; Joint Motion.pdf; Joint Request.pdf

Please see the attached, filed by the Enforcement Bureau in EB Docket No. 07-147 today. Thank you.

Tamika Parker
Enforcement Bureau
Investigations & Hearings Division
202-418-1770

Non-Public: For Internal Use Only

8/28/2009

Anjali Singh

From: Tamika Parker
Sent: Wednesday, August 05, 2009 2:50 PM
To: 'precomsys@aol.com'; 'jaybishopps@aol.com'; 'michellebishopps@aol.com';
'bill@luselaw.com'
Cc: Anjali Singh; Gary Oshinsky
Subject: Preferred Communication Systems Inc
Attachments: Settlement Agreement to Parties - Privileged and Confidential - Do Not Release.pdf; Joint Motion.pdf; Joint Request.pdf

Please see the attached, filed by the Enforcement Bureau in EB Docket No. 07-147 today. Please note that one attachment, the Settlement Agreement, is privileged and confidential under the Protective Order, and that the Enforcement Bureau has filed it with the Judge under seal. Hard copies will follow in the mail where appropriate. Thank you.

Tamika Parker
Enforcement Bureau
Investigations & Hearings Division
202-418-1770

Non-Public: For Internal Use Only

8/28/2009

Before the
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Washington, D.C. 20554

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in the 800 MHz Specialized Mobile Radio)	
Service)	

To: Chief Administrative Law Judge
Richard L. Sippel

JOINT MOTION
TO
ACCEPT SETTLEMENT AGREEMENT UNDER SEAL

1. The Enforcement Bureau, Preferred Communication Systems, Inc., Preferred Acquisitions, Inc., Charles M. Austin, and Jay R. Bishop (collectively, the "Parties"), hereby jointly request that the attached Settlement Agreement be accepted for filing under seal and that the Settlement Agreement remain under seal until such time as it is approved by the Presiding Judge in this proceeding.

2. The Parties are simultaneously filing herewith a Joint Request for Approval of Settlement Agreement ("Joint Request"). The Joint Request sets forth the justifications

explaining why the public interest would be served by adoption of the instant Settlement Agreement.

3. The Settlement Agreement contains terms, conditions, and representations which will only become effective if and when the Settlement Agreement is approved by the Presiding Judge. The Parties believe that disclosure of such terms, conditions, and representations to the general public before the Settlement Agreement has become effective could prejudice the captioned-licensees in the event that the Settlement Agreement is ultimately disapproved by the Presiding Judge and this case returned to hearing status. Accordingly, in addition to filing the Settlement Agreement under seal, the Parties have marked that copy of the Settlement Agreement sent to the above-captioned parties as subject to the Protective Order adopted in EB Docket No. 07-147 until such time as the Presiding Judge approves it.¹

4. It is well established that a presiding administrative law judge has broad discretion to provide for the proper conduct of the hearing, to protect parties, and to take such other actions which would be conducive to the efficient and expeditious management of the proceeding.² In this regard, the Parties believe that accepting the subject Settlement Agreement under seal and releasing it at such time that it becomes effective strikes an appropriate balance between protecting the interests of the captioned licensees and those of the public in an open, evidentiary hearing.

5. Accordingly, the Parties respectfully request that the Presiding Judge accept the attached Settlement Agreement under seal and to release it, if at all, as an attachment

¹ See *Pendleton C. Waugh, et al.*, FCC 07M-44, Order (ALJ Steinberg, rel. November 2, 2007) (adopting Protective Order proposed by Bureau, as revised by email concurrence with all parties).

² See, e.g., 47 C.F.R. § 1.313.

to his order approving the Settlement Agreement. PCSI, PAI, Charles M. Austin, and Jay R. Bishop represent that they have read this Joint Motion To Accept Settlement Agreement Under Seal, concur with the representations therein, and have authorized the undersigned to file this Motion on their behalf.

Respectfully submitted,
Kris Anne Monteith
Chief, Enforcement Bureau

A handwritten signature in black ink, appearing to read "Gary A. Oshinsky", is written over a horizontal line.

Gary A. Oshinsky
Anjali K. Singh
Attorneys, Investigations and Hearings Division

Federal Communications Commission
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August 5, 2009

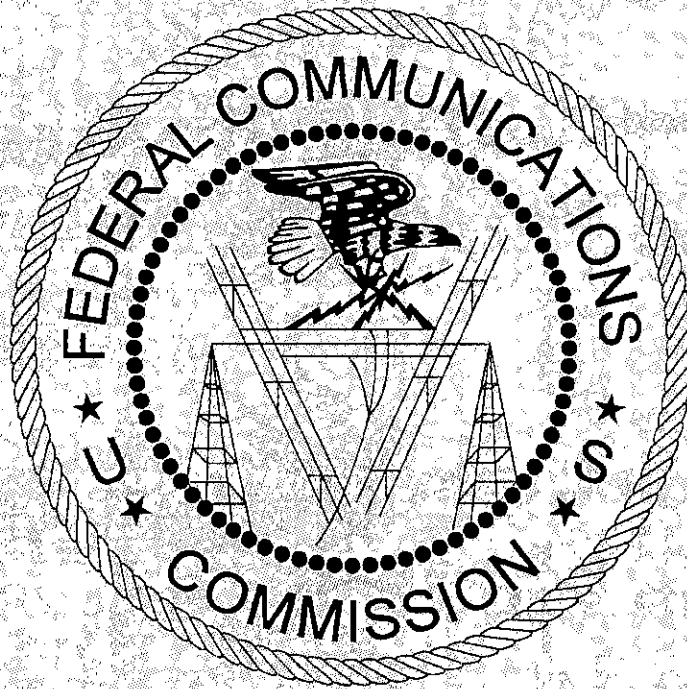
Attachment

Note:

The Joint Motion to Accept Settlement Agreement Under Seal served on the Presiding Judge and parties to this proceeding includes a copy of the proposed Settlement Agreement, for which coverage under the Protective Order is sought until such time as the Presiding Judge approves it.

The Joint Motion to Accept Settlement Agreement Under Seal filed with the Office of the Secretary intentionally does not include a copy of the proposed Settlement Agreement.

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